



DNOTE  
State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3247/P1 P2  
JTK:wlj:jf

WANTED SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WFO:  
Inserts are  
out of order.

(regenerate)

1 **AN ACT** ~~to repeal 108.18 (2) (b); to amend 20.445 (1) (nb), 108.04 (1) (b) 2., 108.05~~  
2 ~~(3) (a), 108.15 (3) (e), 108.15 (5) (b), 108.151 (1), 108.151 (5) (f), 108.18 (2) (c) and~~  
3 ~~108.19 (1e) (a); and to create 108.04 (1) (c) and 108.05 (3) (c) of the statutes;~~  
4 **relating to:** various changes in the unemployment insurance law, granting  
5 rule-making authority ~~and~~ making appropriations. *and providing a penalty*

**Analysis by the Legislative Reference Bureau**

This bill makes various changes in the unemployment insurance law.  
Significant provisions include:

~~BENEFIT RATE CHANGES~~ (CS + centered)  
~~OTHER BENEFIT CHANGES~~

**Partial unemployment**

Currently, if a claimant earns wages in a given week, the first \$30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67% of the remaining amount of wages earned, but no claimant is eligible to receive benefits for any week if the benefits would be less than \$5 and any wages that the claimant would have earned in any week for work performed for his or her employer had the claimant accepted available work from that employer are treated as wages earned for that week. Any amount that a claimant earns for services performed as a volunteer fire fighter or volunteer emergency medical technician in any week does not reduce the claimant's weekly benefit payment for that week. With certain exceptions, if a claimant works at least 35 hours in any given week for the employer that provided

**OTHER CHANGES*****Due date for reimbursements***

Currently, public employers and nonprofit organizations may elect, in lieu of paying contributions to the unemployment reserve fund, to reimburse the fund for any benefit payments made by the fund that are chargeable to these employers. Any reimbursement is due not later than 20 days after DWD mails a bill to an employer for the reimbursement. This bill provides that any reimbursement is due on the 20th day after DWD mails a bill to an employer for a reimbursement or the last day of the month in which DWD mails a bill to an employer for a reimbursement, whichever is later.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 20.445 (1) (nb) of the statutes is amended to read:

20.445 (1) (nb) *Unemployment information technology systems; federal moneys.*

As a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e). No moneys may be encumbered from this appropriation account after the beginning of the 3rd 12-month period beginning after May 21, 1998 May 22, 2002.

**SECTION 2.** 108.04 (1) (b) 2. of the statutes is amended to read:

1 disregard discrepancies of less than \$2 between wages reported by employees and  
2 employers.

3 **SECTION 5.** 108.05 (3) (c) of the statutes is created to read:

4 108.05 (3) (c) A claimant is ineligible to receive any benefits for a week in which  
5 the claimant works a total of 40 or more hours in employment with one or more  
6 employers.

7 **SECTION 6.** 108.15 (3) (e) of the statutes is amended to read:

8 108.15 (3) (e) Each time a government unit elects or reelects contribution  
9 financing its initial contribution rate shall be 2.7% on its payroll for each of the first  
10 3 calendar years in which such election or reelection is in effect, ~~plus any~~  
11 ~~contributions payable under s. 108.18 (2) (b).~~ If a government unit terminates its  
12 election of contribution financing it may not reelect contribution financing within a  
13 period of 3 calendar years thereafter.

14 **SECTION 7.** 108.15 (5) (b) of the statutes is amended to read:

15 108.15 (5) (b) The department shall monthly bill each government unit for any  
16 reimbursements required under this section, and any reimbursement thus billed  
17 shall be due and shall be paid by such government unit within 20 days after the date  
18 such bill is mailed to it the government unit by the department or by the last day of  
19 the month in which the bill is mailed, whichever is later.

20 **SECTION 8.** 108.151 (1) of the statutes is amended to read:

21 108.151 (1) **EMPLOYER'S CONTRIBUTION RATE.** Each nonprofit organization which  
22 is or becomes an employer subject to this chapter shall be subject to all its provisions  
23 except as it may elect reimbursement financing in accordance with sub. (2). If such  
24 an approved election is terminated, the employer's contribution rate shall be 2.7%

1 other contributions payable under s. 108.18 and this section, pay an assessment to  
2 the administrative account for each year prior to the year ~~2000~~ 2002 equal to the  
3 lesser of 0.01% of its payroll for that year or the solvency contribution that would  
4 otherwise be payable by the employer under s. 108.18 (9) for that year.

5 **SECTION 13. Appropriation changes.**

6 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation  
7 to the department of workforce development under section 20.445 (1) (nb) of the  
8 statutes, as affected by the acts of 1999, the dollar amount is increased by \$-0- for  
9 fiscal year 1999-00 and the dollar amount is increased by \$-0- for fiscal year  
10 2000-01 to increase funding for the purpose for which the appropriation is made.

11 **SECTION 14. Initial applicability.**

12 (1) The treatment of section 108.04 (1) (b) 2. and (c) of the statutes first applies  
13 with respect to determinations issued under sections 108.09 and 108.10 of the  
14 statutes on the effective date of this subsection or, in relation to determinations that  
15 are appealed, to decisions issued under sections 108.09 and 108.10 of the statutes on  
16 April 2, 2000.

5NS  
7-16  
17 ~~(5)~~ The treatment of section 108.05 (3) (a) and (c) of the statutes first applies  
18 with respect to weeks of unemployment beginning on April 2, 2000.

19 ~~(6)~~ The treatment of sections 108.15 (5) (b) and 108.151 (5) (f) of the statutes  
20 first applies to reimbursements billed in the month following the month that  
21 includes the effective date of this subsection.

22 **SECTION 15. Effective dates.** This act takes effect on the first Sunday after  
23 publication, except as follows:

AmS2A:1

1991-92 Legislature

-4-

LRB-0637/12  
JTK:kmg:lj

Not

Sub Possession or use of controlled substances

19.4 Currently, if an employee is discharged for misconduct connected with his or her work which evinces wilful or wanton disregard of the employer's interests or carelessness or negligence in the performance of duties to such degree or recurrence as to manifest culpability or wrongful intent or exhibit such behavior as to endanger the physical safety of persons on the worksite, the employee is ineligible to receive benefits until <sup>seven</sup> ~~3~~ weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment covered by the unemployment compensation law of any state or the federal government. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. If an employee is suspended for good cause connected with his or her work, the employee is ineligible to receive benefits until ~~3~~ <sup>three</sup> weeks have elapsed since the end of the week in which the suspension occurs or until the suspension is terminated, whichever occurs first. ~~DILHR may prescribe, by rule, conditions that constitute "misconduct" or "good cause" for purposes of these provisions. The bill directs DILHR to prescribe, by rule, conditions under which an employee's possession, use or impairment due to use of a controlled substance (dangerous drug) or an employee's violation of a work rule relating to controlled substances testing constitutes misconduct or good cause for suspension.~~

④ This bill deletes the requirement for DWD to promulgate this rule, thereby leaving determination of misconduct or good cause for suspension under those circumstances to be determined on a case-by-case basis.

Under  
current  
law,  
DWD  
must



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LEGISLATIVE REFERENCE BUREAU

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INSERT 2A:2

***Voluntary termination of employment***

Currently, if an employee voluntarily terminates his or her employment with an employer, the employee is generally ineligible to receive benefits until <sup>four</sup> 4 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her employment and receive benefits without requalifying under this provision if the employee terminates his or her employment with good cause attributable to his or her employer. In addition, an employee may voluntarily terminate his or her employment and receive benefits without requalifying under this provision if the employee terminates his or her employment because the employee's employer made employment, compensation, promotion or job assignments contingent upon the employee's consent to sexual contact or sexual intercourse.

This bill eliminates the second exception relating to sexual contact or sexual intercourse, but specifically provides that "good cause" under the first exception includes sexual harassment by an employer or employer's agent of which the employer or agent knew or should have known but failed to take timely and appropriate corrective action.

The bill also creates a new exception <sup>SET</sup> ~~which~~ provides that an employee may voluntarily terminate his or her employment and receive benefits without requalifying if the employee terminates his or her employment due to domestic abuse, concerns about his or her personal safety or harassment or the personal safety or harassment of his or her children, the employee obtains a restraining order from a court in this state or another jurisdiction relating to domestic abuse, child abuse, harassment or contact with a vulnerable adult, regardless of whether the order is enforceable in this state, and <sup>the</sup> ~~the~~ employee demonstrates that the order has been or is reasonably likely to be violated.

Under the bill, the cost of benefits paid to an employee under the sexual harassment exception, in accordance with current law, is generally charged to the employer or employers that employed the employee during his or her base period (recent work period during which benefit rights accrue). The cost of benefits paid to an employee under the abuse, contact and harassment exception is charged to the balancing account of the unemployment reserve fund, which is financed from the contributions (taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

(END OF INSERT 2A)

INSERT 3A

↓

***Fraudulent claims for benefits***

Currently, if a person makes a false statement or ~~representation~~ <sup>misrepresentation</sup> in order to obtain benefits that are payable to another person, DWD may file a civil lawsuit to recover the amount of the benefits improperly paid. In addition, the person making the fraudulent statement or ~~representation~~ <sup>misrepresentation</sup> is guilty of a misdemeanor and is subject to a fine of not less than \$100 nor more than \$500 or imprisonment for not more than 90 days, or both, for each false statement or misrepresentation.

This bill provides, in addition, that DWD may, after an investigation and hearing, issue an administrative determination requiring the repayment of any benefits that were payable to a person other than the claimant and that were obtained by means of a false statement or representation and may also require the offender to pay an additional amount equal to 50% of the amount of the benefits obtained. Under the bill, the determination may be appealed to the labor and industry review commission and the decision of the commission may in turn be appealed to the courts.

INSERT 3B

***Use of federal employment security moneys***

Currently, federal moneys received by this state under the federal Reed Act of 1954 may be used to pay benefits or for employment security administration, including unemployment insurance, the public employment service and related statistical operations. This bill provides, in accordance with federal law, that these moneys may only be used for the purpose of unemployment insurance administration in federal fiscal years 2000, 2001 and 2002.

***Charging of certain improperly paid benefits***

Currently, when DWD pays benefits to an employee improperly due to a departmental error, the account of the employer is not charged for the benefits. This bill removes conflicting language in current law to clarify that if the employer is subject to a requirement to pay contributions (taxes) to the unemployment reserve fund, the cost of any benefits that are improperly paid to an employee of the employer and that are not recovered from that employee are charged to the balancing account of the unemployment reserve fund.

**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

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INSERT 3-13

~~SECTION 4.~~ <sup>#</sup> 108.02 (10g)<sup>✓</sup> of the statutes is created to read:

108.02 (10g) DOMESTIC ABUSE. "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1)<sup>✓</sup>, (2)<sup>✓</sup> or (3)<sup>✓</sup>, or a threat of physical abuse between adult family or adult household members, by an adult person against his or her spouse or former spouse equivalent or by an adult person against an adult person with whom the person has a child in common.

~~SECTION 14.~~ <sup>#</sup> 108.02 (15s)<sup>✓</sup> of the statutes is created to read:

108.02 (15s) FAMILY MEMBER. "Family member" means a spouse, parent, child or person related by consanguinity to another person.

~~SECTION 14.~~ <sup>#</sup> 108.02 (17m)<sup>✓</sup> of the statutes is created to read:

108.02 (17m) HOUSEHOLD MEMBER. "Household member" means a person who is currently or formerly residing in a place of abode with another person.

( END INSERT 3-13 )

INSERT 4-11:5

~~SECTION 4.~~ <sup>#</sup> 108.04 (7) (s)<sup>✓</sup> of the statutes is created to read:

108.04 (7) (s) 1. Paragraph (a) does not apply if the employe terminates his or her work due to domestic abuse, concerns about personal safety or harassment or concerns about the personal safety or harassment of his or her children, the employe obtains a restraining order under s. 813.12<sup>✓</sup>, 813.123<sup>✓</sup>, 813.125<sup>✓</sup> or 813.127<sup>✓</sup> or a similar statute, or has a foreign protection order recognized under s. 813.128<sup>✓</sup>, and the employe demonstrates to the department that the order has been or is reasonably likely to be violated.

11



2. In determining whether a restraining order is reasonably likely to be violated under <sup>Subd. 1.</sup> ~~sub. (1)~~ the department shall consider evidence, regardless of its age, including court, criminal, medical, law enforcement, child protective services, social services, psychological, school and similar records, and statements from persons other than the employee who have knowledge of circumstances related to the potential for violation of the order.

SECTION ~~6.~~<sup>#</sup> 108.04 (11) (cm) of the statutes is created to read:

108.04 (11) (cm) Any person who makes a false statement or <sup>mis</sup>~~re~~presentation in order to obtain benefits that are payable to another person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be required to forfeit an additional amount equal to 50% of the amount of benefits obtained.

(END OF INSERT 4-11:5)

INSERT 6-12:2

SECTION 6. 108.161 (3e) of the statutes is created to read:

108.161 (3e) Notwithstanding sub. (3), any moneys provided under section 903 of the federal social security act for federal fiscal years 2000, 2001 and 2002 shall be used solely for unemployment insurance administration.

INSERT 7-16

~~9~~ (2) The treatment of sections <sup>9</sup>108.04 (7) (b) and (i) of the statutes first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection or, in relation to determinations that are appealed, to decisions issued under section 108.09 of the statutes on April 2, 2000.

↓

6x (3) The treatment of sections 108.04 (7) (h) and (s) of the statutes first applies with respect to benefit years which <sup>that</sup> begin on the effective date of this subsection for which a termination of employment does not affect an employee's eligibility under any claim filed before that date.

6x (4) The treatment of sections 108.04 (11) (am) and 108.095 of the statutes first applies with respect to false statements and representations made on the effective date of this subsection.

END OF INSERT  
7-16

FW 53-1 J

Section #. 20.445 (1) (n) of the statutes is amended to read:

20.445 (1) (n) *Unemployment administration; federal moneys.* All federal moneys received for the employment service under s. 106.09 (4) to (6), for the administration of unemployment insurance or for the performance of the department's functions under ch. 108, and for its other efforts to regularize employment, to pay the compensation and expenses of appeal tribunals and of councils and to pay allowances stimulating education during unemployment, to be used for such purposes <sup>except as provided in s. 108.161(3e)✓</sup> and to transfer to par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb).

~~History: 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; s. 13.93 (2) (c).~~

Ans 4-11:1

Section #. 108.04 (5) of the statutes is amended to read:

108.04 (5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. ~~The department shall, by rule, prescribe the conditions under which an employee's possession, use or impairment due to use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), or an employee's violation of a work rule relating to controlled substances testing constitutes misconduct.~~ This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39.

Ans 4-11:2

Section #. 108.04 (6) of the statutes is amended to read:

108.04 (6) DISCIPLINARY SUSPENSION. An employee whose work is suspended by an employing unit for good cause connected with the employee's work is ineligible to receive benefits until 3 weeks have elapsed since the end of the week in which the suspension occurs or until the suspension is terminated, whichever occurs first. ~~The department shall, by rule, prescribe the conditions under which an employee's possession, use or impairment due to use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), or an employee's violation of a work rule relating to controlled substances testing constitutes good cause for suspension.~~ This subsection does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39.

Ins 4-11:3

Section #. 108.04 (7) (b) of the statutes is amended to read:

108.04 (7) (b) Paragraph (a) does not apply if the department determines that the employee terminated his or her work with good cause attributable to the employing unit. In this paragraph, "good cause" includes, but is not limited to, a request, suggestion or directive by the employing unit that the employee violate federal or Wisconsin law.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39.

for sexual harassment, as defined in s. 111.32 (13), by an employer or employer's agent, of which the employer or agent knew or should have known but failed to take timely and appropriate corrective action.

to SECTION RP, 108.04 (7) (i)

Br 54-11:4

Section #. 108.04 (7) (h) <sup>✓</sup> of the statutes is amended to read:

108.04 (7) (h) The department shall charge to the fund's balancing account benefits paid to an employe that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employe voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k), (L), (o), (p) <sup>2</sup> or <sup>(s)</sup> ~~(q)~~ applies.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39.

→ SECTION #, RP: 108.04 (7) (i) <sup>✓</sup>

\*WFO: ~~Insert 4-11:3 is on the next page and should come before this page~~ Also insert 4-11:5 is on <sup>a</sup> page <sup>six pages</sup> before this (out of order).

to 54-11.6

Section #. 108.04 (13) (d) of the statutes is amended to read:

108.04 (13) (d) If the department finds that any benefits charged to an employer's account have been erroneously paid to an employee without fault by the employer, the department shall notify the employee and the employer of the erroneous payment. If recovery of an overpayment is permitted under s. 108.22 (8) (c) and benefits are currently payable to the employee from the employer's account, the department may correct the error by adjusting the benefits accordingly. To correct any erroneous payment not so adjusted, ~~whenever recovery of an overpayment is permitted under s.~~

~~108.22 (8) (c), the department shall restore the proper amount to the employer's account and charge~~ *that was charged to the account of an employer that*

~~that amount to the fund's balancing account, and shall thereafter reimburse the balancing account~~ *is subject to the contribution*

~~by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employee,~~

~~unless the employer is a government unit or nonprofit organization which has elected reimbursement~~ *requirements of ss.*

~~financing. To correct any erroneous payment not so adjusted from the account of an employer which~~ *108.17 and 108.18*

~~is a government unit or a nonprofit organization and which has elected reimbursement financing;~~

~~whenever recovery of an overpayment is permitted under s. 108.22 (8) (c), the department shall~~

~~credit to the account benefits which would otherwise be payable to, or cash received from, the~~ *if recovery of the overpayment is permitted under s. 108.22 (8) (c),*

~~employee~~ *or if recovery of the overpayment is not permitted under s.*

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c.

28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 408, 538; 1985 a. 17, 29, 40; 1987

a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118.

417, 448; 1997 a. 35, 39.

*108.22(8)(c), restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07(5)*



payable to other persons  
SECTION #. CR; 108.095

TRANS 5-6:11

(1) The procedures under this section apply to

108.095 ~~Statement of claims of~~ false statement or representation to obtain benefits. In connection with any issue arising under this chapter as to the false

statement or representation of a person to obtain benefits, ~~or~~ another, in addition to any determination, decision, or other procedure provided under s. 108.09 ~~and~~ whether or not a penalty is provided in s. 108.24 ~~the following procedure shall apply.~~

concerning any alleged

that are payable to person, and are

For an offense

under ~~the following procedure shall apply.~~

whether any person has obtained

(1)(2) The department shall investigate the ~~existence and~~ extent of liability of the person who obtains ~~another person's~~ benefits by false statement or representation, and may issue an initial determination accordingly. ~~The department may set aside or amend the determination at any time prior to a hearing on the determination on the basis of subsequent information or to correct a mistake, including an error of law. The department shall mail a copy of each determination to the last-known address of all parties affected thereby. Unless designated by determination under this section, an employing unit is not a party under this section.~~

concerning its findings

to the determination

that were payable to another person by means of any

No 11

The department may set aside or amend the determination at any time prior to a hearing concerning the determination under sub (5) on the basis of subsequent information or to correct a mistake, including an error of law.

INS 5-6:2

appeal that determination by requesting

(3) (2)

Any party affected by the determination may request a hearing as to any matter in that determination if the request is received by the department or postmarked within 14 days after the mailing.

concerning

4 (4) Upon issuance of a determination, the department is a party to the determination

(2) (4) (5) (2)

Any hearing duly requested shall be held before an appeal tribunal, appointed under established as provided by s. 108.09(3) and s. 108.09(4) and (5) shall be applicable to the proceedings before such tribunal. Any party affected by the determination of the department may petition the commission for review of the appeal tribunal's decision under s. 108.09(6).

applies

to

Section

of the appeal tribunal

No 1

STET

REN

The commission's authority to take action as to any issue or proceeding under this section is the same as that specified in s. 108.09(6).

provided

(7)

4

REN

The department or any party affected by the determination may commence action for the judicial review of a commission decision under this section, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the persons' last known addresses. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09(7).

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Ans 5-6:3

- 4 (5) (B) (8) The mailing of determinations and decisions <sup>under this section</sup> provided in subs. (1) to (4) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

service

- 4 (6) (B) (9) ~~The department shall not charge a person fees in~~ <sup>Section 108.09 (9) (b) ✓</sup>  
<sup>applies to</sup>  
No party may be charged fees by the department or its representatives in any proceeding under this chapter. The representation and ~~limitation of~~ fees on any party shall be the same as provided in s. 108.09(8)(b).

for representation of parties in proceedings under this section

(END OF INSERT 5-6)

INS 6-12:1

Section #. 108.16 (6m) (e) of the statutes is amended to read:

108.16 (6m) (e) Any overpayment of benefits that is written off under sub. (3), unless it is chargeable to an employer's account under s. 108.04 (13) (c) ~~or (d)~~.

History: ~~1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39.~~

WFO:  
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before this.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3247/P2DN

JTK.....

WJ

1. This draft includes all of the 11 items you identified as approved on your memo dated July 1, 1999.

2. Concerning proposed s. 108.02(10g),<sup>✓</sup> relating to a definition of "domestic abuse", I'm not sure that the term "spouse equivalent" is self-defining. It is not currently used in the statutes. I think we need to come up with some other words to substitute for this term or to insert a definition of the term.

2. Under proposed s. 108.04 (11) (cm),<sup>✓</sup> do you want to permit an additional penalty for benefits fraudulently obtained to be assessed in an amount *not more than* 50% of the amount of the benefits obtained?

3. Because proposed s. 108.04 (11) (cm)<sup>✓</sup> imposes a new penalty upon persons who attempt to obtain benefits that are payable to other persons and I have some doubt as to whether this new penalty can be applied to offenses occurring before the effective date of the act, I made that provision, as well as proposed s. 108.095, which interlocks with it, initially applicable to false statements and representations made on the effective date of the act. Please let me know if you would like to see a different treatment of this issue.

4. Concerning proposed s. 108.04 (7) (s),<sup>✓</sup> relating to a proposed quit exception for victims of certain abuse or contact, are you sure you want to include restraining orders that are not enforceable in Wisconsin? See s. 806.247 (2), stats. Under your language, a protective order qualifies if it is obtained under a statute that is similar to s. 813.12,<sup>✓</sup> ~~813.122~~ 813.123 or 813.125. However, this is also the standard used to qualify foreign protective orders for enforcement in Wisconsin under s. ~~813.18~~ (1), stats. The only effect of including the "similar statute" language, therefore, is to recognize protective orders that Wisconsin courts would not recognize because of some legal defect. My concern would be that if the defect is serious enough to offend due process requirements, for example, should we be taking action on the basis of it?

5. Also concerning proposed s. 108.04 (7) (s),<sup>✓</sup> you did not indicate an initial applicability or effective date for this provision. I inserted one modeled after 1993 Wisconsin Act 373, section 79 (8).

6. Concerning the treatment of s. 108.04 (13) (d),<sup>✓</sup> and 108.16 (6m) (e),<sup>✓</sup> stats., relating to crediting of employers when recovery of benefits is waived due to departmental error, it is my recollection that the last time s. 108.04 (13) (d), stats., was amended it

went through a number of incarnations. The cross<sup>o</sup>reference to it in s. 108.16 (6m) (e),<sup>✓</sup> stats, may have been appropriate for the earlier drafts but should have been removed in the final version. Therefore, I have deleted it. I have also revised s. 108.04 (13) (d), stats, along the lines you suggested, although I have reworked the language a little.

7. I have clarified and restructured your submitted language ~~on~~<sup>in</sup> proposed s. 108.095,<sup>✓</sup> relating to false statements and representations, to utilize to some extent the proposed language of the rewrite committee for s. 108.10,<sup>✓</sup> stats. because this language is clearer than the existing statutory language. This draft, however, preserves the substance of your proposal, I believe.

8. In proposed s. 108.161 (3e),<sup>✓</sup> relating to a temporary limitation on the use of Reed Act moneys, I have clarified that the limitation applies to federal fiscal years 2000, 2001 and 2002 (October 1, 1999, through September 30, 2002). Please let me know if this is not correct.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**ANALYSIS OF PROPOSED LAW CHANGE  
ELECTRONIC FILING OF QUARTERLY WAGE INFORMATION**

1. **Description of Proposed Change**

Current law specifies that any employer who employs 250 or more employees is required to file quarterly wage detail using a medium approved by the Department. The required medium has never been defined. In addition, current law does not provide for a penalty if employers do not use the required medium. This proposed change would define the required medium, reduce the size of employers involved from 250 or more employees to 100 or more, and provide for a penalty if the required medium is not used within one year from the end of the quarter in which they reported in excess of 100 employees.

2. **Proposed Statutory Language**

Section 108.205(2) should be amended as follows:

(2) All employers of 100 or more employees, as determined under s. 108.22(1)(ae) shall file the quarterly report under sub. (1) using a medium electronic media approved by the department for such employers. This section will apply to a report for any quarter at least 1 year after the quarter in which the employer initially reported 100 or more employees.

In addition, section 108.22(1) should be amended as follows:

...If any such employer is delinquent in making any quarterly report under s. 108.205 by the assigned due date, the employer shall pay a tardy filing fee for each delinquent quarterly report as follows:

1. For 1 to 100 employees, \$1525
- ~~2. For 101 to 200 employees, \$40~~
- ~~3. For 201 to 300 employees, \$65~~
- ~~4. For 301 to 400 employees, \$75~~
- ~~52. For more than 400~~100 employees, \$11575.

In addition, any employer who did not file the report in electronic media format as required is s. 108.205(2) may be assessed a penalty of \$10 for each employee not reported electronically.

3. **Proposer's Reason for Change**

The use of electronic media (diskette, magnetic tape, modem, etc.) to input data is much more efficient than scanning or keying data submitted on paper. About 65% of the 3,000,000 detail wage items reported by employers each quarter are submitted on some form of electronic media. This law change would increase the number of wage items reported electronically and result in both administrative efficiencies and quicker availability of data.

There are approximately 4,800 employers who report wages for 100 or more employees. These employers submit about 1,900,000 of the 3,000,000 wage items reported each quarter. About 3,600 of these 4,800 employers already submit 1,700,000 wage items on electronic media. The law change would require the remaining 1,200 employers to report electronically and increase the percentage of total wage items reported electronically to about 73%.

4. **Brief History and Background of Current Provision**

The current provision requires employers with 250 or more employees to report using a medium approved by the Department. This was enacted in 1987 along with the legislation requiring all employers to report employee wage information each quarter. To date, the Department has not required these large employers to report using electronic media. In addition, current law does not provide for a penalty if employers do not report using a department approved media. All employers who currently report electronically are doing so voluntarily.

5. **Effects of the Proposed Change**

- a) Policy: The Department's policy has been to encourage electronic reporting voluntarily. This change would require large employers to file electronically.
- b) Administrative Impact: The administrative impact is all positive. Processing quarterly wage data received on paper is very labor intensive. Staff savings will result from an increase in electronic filing. However, the Department would incur the cost of working very closely with the approximately 1,200 employers who would have to convert from paper reporting to electronic reporting.
- c) Equitable: About 1,200 large employers not currently filing electronically will be affected. They will have to report wage data electronically rather than on paper. The Department will benefit from the administrative efficiency created by processing less paper each quarter.
- d) Fiscal Impact: Some staff savings will result from processing less paper. These savings will assist the Department in providing for more timely availability of data. It currently costs the Department about \$0.23 to process a



single wage item received on paper. The cost to process a wage item electronically is about \$0.037. The resulting savings from processing more wage items electronically would be used to work with employers to convert from paper to electronic reporting.

6. **State and Federal Issues**

None

7. **Proposal Effective Date**

Both the required reporting provision and the penalty provision should take effect with reports due for the first calendar quarter of 2001. The due date for those reports is April 30, 2001. This would allow time to assist employers with their conversion to electronic reporting.

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ANALYSIS OF PROPOSED LAW CHANGE  
ELIMINATION OF .02% SOLVENCY RATE – A TAX RATE REDUCTION  
(Formerly “Small Tax Liabilities” )

1. Description of Proposed Change

Under current statutory tax rate schedules, the minimum rate of .02% for small employers (under \$500,000 in taxable payroll) has resulted in employers having to make very small quarterly payments. This proposal changes the solvency rate for this rate category to 0. It eliminates the .02% solvency rate in schedules C and D and replaces it with a 0 rate.

2. Proposed Statutory Language

Amend Figure 108.18 (9) as follows:

Schedule C & D			
Line	Contribution Rate	Employers With Payroll Under \$500,000	Employers With payroll Under \$500,000
		Solvency Rate	Solvency Rate
1	0.00	0.020	0.05

3. Proposer's Reason for Change

The .02% rate contained in the tax rate schedules in chapter 108 results in many employers being required to make very small quarterly tax payments. Over 11,500 employers made approximately 28,000 tax payments during 1998 that were under \$2. About 8,000 of these employers were in the .02% rate category.

Many of the 28,000 payments were for tax liabilities that were significantly under \$2. In fact many were in the form of a check made out for pennies. These payments are an irritant for employers. The total tax payments made with the 28,000 quarterly reports under \$2, was only \$25,000. Many of these employers call or write the Department questioning why they are required to send in such

small payments. The employer cost to make the small payments and the Department's cost to process and deposit the payments exceeds the actual payments made. We estimate that it cost the Department \$50,000 to process and deposit the \$25,000 in payments received with the 28,000 quarterly reports.

Most of the 9,100 employers who were assigned the .02% minimum rate for 1998 were small employers. About 8,000 of these employers had 5 or fewer employees during 1998 and only 440 employed more than 10 employees. In addition, the majority of these employers were in the retail trade and services industries.

4. Brief History and Background of Current Provision

Prior to 1983, employers with the most favorable experience were not required to make payments. Employers in this reserve ratio category were assigned a zero basic and solvency rate. Through a series of law changes beginning in 1984, the zero rate category was eliminated and employers with the most favorable experience were assigned a series of minimum rates which eventually decreased to .02% in 1996. This rate category has resulted in numerous employers having to make very small tax payments. Of the 9,100 employers assigned to this rate category for 1998, over 8,000 of them were required to make quarterly tax payments that amounted to less than \$2.

5. Effects of the Proposed Change

- a. Policy: Numerous inquiries and complaints are received from employers who pay very small amounts. It has been the department's policy to advise these employers to prepay annually. These employers would no longer have to pay under this proposal.
- b. Administrative Impact: Employers would no longer incur the expense of using a check to make very small payments. The Department would realize a savings by not having to process, deposit and post over 28,000 payments made annually by employers in the lowest rate category. We estimate that it costs over \$64,000 to process these payments. The savings realized can be shifted to other priority functions.
- c. Equitable: Employers with the most favorable unemployment experience would benefit by not having to make small tax payments. However, they would still be required to submit quarterly contribution and wage information. There would be no effect on claimants.
- d. Fiscal: The revenue loss to the UI Reserve Fund is estimated to be about \$49,000 annually. This is based on the 1998 actual tax payments made by all employers in the lowest rate category.

6. State and Federal Issues

There are no state/federal issues involving this proposed change. Employers will continue to receive the 5.4% federal unemployment tax credit even though there is no state tax liability. As long as all employers in the 2 affected rate categories are treated the same and given the 0 rate, there is no federal conformity issue.

7. Proposed Effective Date

This change should take effect with tax rates calculated for a calendar year. Tax rates are calculated during October each year for the following calendar year.

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Dept # 14  
Date: December 2, 1998  
Proposed by: Department  
Prepared by: C. Matzat  
Amended by BOLA, 5/3/99

**Waiver of Recovery of Overpayment**  
Analysis of Proposed UI Law Change

1. Description of the Proposed Change. This law change proposal amends the language of s. 108.22(8)(c) to accurately reflect the intent behind the current overpayment waiver section. This amendment removes language that is susceptible to misinterpretation and adds language to make clear that the department will waive recovery of benefits erroneously paid to a claimant if the overpayment was caused solely by department error.
2. Proposed Statutory Language.

Amend s.108.22 (8)(c) as follows :

1. The department shall waive recovery of benefits that were erroneously paid only if all the following conditions are met:
  - a. The overpayment was the result of department error as defined in s. 108.02(10e); ~~whether or not an employer is also at fault under s.108.04 (13)(f);~~
  - b. The erroneous payment was not the fault of the employer under s.108.04(13)(f); and
  - c. The overpayment did not result from the fault of an employee as provided in s. 108.04(13)(f), or because of a claimant's false statement or misrepresentation.
3. Proposer's Reason for the Change.

When s.108.22(8)(c) was created, the analysis attached to the bill explained the rationale for the legislation, stating in part:

"The bill provides that, if benefits are erroneously paid to a claimant due solely to an error by DILHR involving a mathematical mistake, miscalculation, misapplication of law or mistake of fact or resulting from misinformation on which a claimant relied, or due to such an error and for any reason involving fault by an employer, without fault on the part of the claimant, DILHR must waive recovery of the benefits. The benefits are either charged to the balancing account or paid from departmental revenues derived from interest and penalties assessed

against certain employers or, when paid for a reason involving fault by an employer, are charged to the claimant's employer or employers."  
(Emphasis added.)

As stated in the above bill analysis, the intent of the bill was to absolve the claimant of liability for benefits improperly paid due either to employer fault or department error. In such cases, either the employer or the department is liable for the improperly paid benefits. When the employer is at fault, the employer or employers' accounts are charged. When only the department is at fault, the department must waive recovery of the benefits.

When a covered Wisconsin employer is solely at fault for the improper payment of benefits, there is no overpayment because the improperly paid benefits are charged or remain charged to that employer's account. In such cases, an overpayment waiver would be irrelevant because there is no overpayment to waive. This is also true when the department has some fault for the improperly paid benefits - there is no overpayment to waive because the improperly paid benefits are charged or remain charged to the account of the employer at fault for the overpayment.

When the department is solely at fault for the improperly paid benefits, an overpayment is established. This provides a basis for documenting the handling of the erroneous payments and proper reporting of monies overpaid to the federal government. The statutes do not waive the overpayment, they only waive recovery of the overpayment to relieve the claimant of liability for those improperly paid benefits. The monies credited to the employer's account are either charged to the balancing fund or paid from the revenues derived by the department from interest and penalty assessments.

When s. 108.22(8)(c) is read in conjunction with s. 108.04(13) as it applies to employer fault, one could incorrectly infer that both the employer and the department can be found liable in some cases for the same improperly paid benefits.

But finding both the employer and department liable for improperly paid benefits makes no sense. If an employer is at fault, there is no overpayment because the employer's account remains charged for the improperly paid benefits. Creating department liability would result in the absurd procedure of first charging the balancing fund and then, as nothing is to be credited to the employer's account, depositing that money back into the balancing fund.

At least one hearing decision has improperly found that the department was responsible for repayment, explicitly citing the current statutory language "whether or not an employer is also at fault." Section 108.22(8)(c) requires amendment so that it is capable of only one clear meaning, even when read in conjunction with other sections.

4. Brief History and Background of Current Provision.

Section 108.22(8)(c) was enacted by Wisconsin Act 373 in April 1994. The Council proposed the law change in 1993 after it was determined that there was no federal conformity issue but that Wisconsin law did not allow the department to waive overpayments made to claimants even when department error was solely responsible for the overpayments. The Council responded to several complaints made by claimants who were overpaid unemployment benefits over many months through no fault of their own and then were required to repay the entire amounts.

5. Effects of the Proposed Change.

- a. Policy. No changes to department policy and practice would result from this change.
- b. Administrative Feasibility. There is no administrative impact. The change to the wording would reinforce current department policy and practice.
- c. Equitable. No equitable issues are created by the proposed change.
- d. Fiscal. As the proposed clarification of the statute would assure the original intent and fiscal effects are achieved, no fiscal impact is anticipated from the change.

6. State and Federal Issues.

- a. Chapter 108. No other law section will be affected by this proposed change to § 108.22(8)(c).
- b. Rules. No rule needs to be changed or created to accommodate this proposed law change.
- c. Conformity. None.

7. Proposed Effective/Applicability Date. The effective date of the act.

**Analysis of Proposed Law Change**  
**Alternate Base Period**

**1. Description of Proposed Law Change**

The provision would require the department to determine whether a claimant who does not qualify for benefits using the normal base period (the first 4 of the last 5 completed quarters) would qualify using an alternative base period (the 4 most recent completed quarters).

**2. Proposed Statutory Language**

Amend § 108.02 (4) of the Statutes as follows:

(4) BASE PERIOD. Except as provided below, An employee's "base period" means the period consisting of the first 4 of the 5 most recently completed quarters preceding the employee's benefit year, which is used to compute his or her benefit rights for that year under s. 108.06. Alternatively, only if the employee does not qualify for benefits using the "base period" defined above, an employee's "base period" means the period consisting of the 4 most recently completed calendar quarters preceding the benefit year. Wages used in a given benefit computation are not available for use in any subsequent benefit computation, except under s. 108.141.

**3. Reason for Proposed Change.**

This would expand benefit eligibility by allowing claimants who are unable to establish a new benefit year using wages under the "normal" UI base period use more recent wages. Its effect would be to include the more recent entrants or re-entrants to the workforce.

**4. Brief History and Background of Provision.**

This change was discussed with the Council [DEPT. #13, 6/26/97] in a past bill cycle as a possible legal requirement in the aftermath of the *Pennington* litigation, which originated in the early 1990's. Although the UI claimants ultimately prevailed in that case, which would have required states with benefit payment laws similar to Wisconsin's to offer an alternative base period to comply with "payment when due" provisions of the Social Security Act, Congress responded by changing federal law to overrule the result of the litigation. Thus, states are not presently required to adopt an alternative base period to comply with FUTA.

Nevertheless, a number of states have adopted or are considering implementing an alternate base period provision. It has been rumored that the federal government may be considering



offering incentives to states to do so. Furthermore, this has become a political issue for various advocacy groups, including the IWF, above, that wish to see benefit eligibility expanded.

Under s. 108.06(3), wages used in a given benefit computation are not available for use in any subsequent benefit computation except under s. 108.141 [extended benefits]. Thus, claimants who draw benefits using an alternate base period benefit year, who then file another new claim immediately thereafter without the passing of any intervening quarter, would have to again utilize the alternate base period for their second benefit year.

## **5. Effects of the Proposed Change.**

**Policy.** Wisconsin has used the current definition of "base period" ever since the wage record reporting system went into effect in the mid-1980's. This change would present a major change compared to current policy.

**Administrative Feasibility.** When a claimant did not qualify using the current base period, the department would have to obtain information about the claimant's earning since the end of the usual base period. This would probably be done by sending a request to the employer for this information. (Depending on the timing of the claimant's application for benefits, that quarter's wage information may be available on the wage record.) Once the information is obtained, the department would determine whether the claimant qualifies for benefits using this alternate base period.

The administrative cost estimate is \$425,000 in one time computer costs and \$88,000 annually.

**Equitable.** This change would result in more claimants qualifying for benefits and more benefits being charged to employers' accounts. Claimants who draw benefits using an alternate base period, and who then file immediately subsequent claims, would have to have the alternate base period used for their second benefit year as well, since one of the quarters which would be used in a normal base period would already have been taken into consideration when determining eligibility for the first benefit year using the alternate base period.

**Fiscal.** It is estimated that expenditures will range from \$3.1 million near the end of a business expansion to \$9.1 million in a downturn for an annual average increase of approximately \$5.3 million. The estimates assume that wage inflation is not a significant factor affecting quarterly wages used in determining eligibility and payment for individuals eligible with the alternate base period.

## **6. State and Federal Issues.**

**Chapter 108.** No additional changes to Ch. 108 would be necessary.

**Rules.** Ch. DWD 123 would need to be updated to include the report which would be sent to employers requesting additional wage information, if necessary.

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**Conformity.** There is no federal conformity issue.

**7. Proposed Effective/Applicability Date.** Benefit years beginning on or after the first Sunday of the first full week in April of 2000.

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**ANALYSIS OF PROPOSED UI LAW CHANGE**

**RESTRICTION ON USE OF INTEREST AND PENALTIES FUND**

1. **Description of Proposed Change.**

This proposal would amend the administrative account section 108.20(2m) to clarify that Interest and Penalties money (I&P) may be used only for UI purposes. It would also repeal statutory subsections that specifically authorize use of (I & P) for non-UI purposes.

Section 108.20(2m) deals directly with I&P. Uses of I&P include career counseling centers, at least until July 1, 1999. However, subs. 108.20(5)-(9) all permit expenditures of I&P for purposes related to the construction and operation of employment security buildings or offices.

Section 108.20 governs the use of I&P money from the standpoint of UI administration. Paragraphs 20.445(1)(gd), (ge) and (gf) govern the use of I&P from the DWD agency perspective.

This proposal requires the amendment of DWD appropriations subsection 20.445(1)(gf) to eliminate DWD's authority to appropriate I&P moneys for the administration of employment service programs.

1997 Wis. Act 27 repealed and recreated 108.20(2m) and 20.445(1)(gd) and they were amended by 1997 Wis. Act 39, all effective July 1, 1999. The re-creation/amendment deleted language authorizing the career counseling center grants.

2. **Proposed Statutory Language.**

(2m) From the moneys not appropriated under s. 20.445 (1) (ge), (gf) and (gg), which are received by the administrative account as interest and penalties under this chapter, the department shall pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m) and may pay interest due on advances to the unemployment reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, may make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance

involving the unemployment insurance program, or may make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund. No moneys from interest and penalties shall be appropriated or spent for other than unemployment insurance purposes. Any moneys reverting to the administrative account from the appropriations under s. 20.445 (1) (ge) and (gf) shall be utilized as provided in this subsection.

Section 108.20(5), (6), (7), (8) and (9) of the statutes are repealed:

108.20(5)

~~(5) If and to the extent that moneys transferred under sub. (4) are unavailable to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the department in connection with its employment security operations, the moneys available under sub. (2m) may be used for such financing.~~

108.20(6)

~~(6) To the extent that moneys available under sub. (2m) are used to finance some or all of the capital costs involved in acquiring employment security office space, there shall be applied to the moneys thus used (the same as if they were moneys credited under s. 108.161) the provisions of s. 108.161 (7), (8), (8m) and (9), except that any resulting credits attributable to the moneys thus used shall be credited under this section.~~

108.20(7)

~~(7) To the extent that federal grants hereunder, or moneys available under sub. (2m), or both, are used to amortize the capital costs of employment security office quarters in a state office building, s. 108.161 (9) shall apply to the costs and quarters thus amortized, except that any resulting credits shall be allocated according to the funds thus used. When such grants or moneys or both have fully amortized such costs, s. 108.161 (8m) shall apply to such quarters.~~

108.20(8)

~~(8) As to office space used for employment security purposes in a state building, if and while federal grants for employment security administration do not fully cover the current costs (either gross rent, or operating costs) properly payable by the department to the state with respect to such space, the department may reserve and use the moneys available under sub. (2m) to assure the required payments to the state.~~

108.20(9)

~~(9) There shall be charged to any moneys available under s. 108.161, until the moneys currently available are fully obligated, any amounts obligated for~~

~~employment security local office building projects, with any remaining costs of such projects charged to the employment security moneys available under sub. (2m), pursuant to sub. (5).~~

Section 20.445 (gf) is amended as follows:

(gf) ~~Unemployment insurance administration~~ ~~Employment security administration~~. From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (13) (c) and 108.22, the amounts in the schedule for the administration of ~~employment service programs~~ and unemployment insurance programs under ch. 108 and s. 106.09 and federal or state unemployment insurance programs authorized by the governor under s. 16.54; and for payments to satisfy any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance involving the unemployment insurance program.

3. **Proposer's Reason for Change.**

The Council prefers to limit the use of the Interest and Penalty funds for purposes directly related to the UI program. In recent years, due to the closing of the public employment offices, the services of the employment service and UI have become increasingly dissociated. This would not prohibit contracting with the employment service for UI purposes.

4. **Brief History and Background of Current Provision.**

The "modern" history of the Interest and Penalty fund goes back to the enactment of section 108.20(2m) by Chapter 36, Laws of 1981. It has been used or proposed for use for UI research, services by the employment (job) service to UI claimants, the Targeted Jobs Tax Credit, HVAC replacement for employment security buildings owned buildings, deferred interest payment, wage record transition, reimbursable noncharging, federal audit exceptions, and career counseling centers.

Currently, I&P money under section 108.20(2m) is used to pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m). It may be used to pay interest due on advances to the unemployment reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, to make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment insurance program, to make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act, or to provide career counseling center grants under s. 106.14. It appears that, due to a law change effective July 1, 1999, career counseling center grants are discontinued.

Furthermore, under subs. 108.20(5)-(9) moneys available under sub. (2m) may be used to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the department in connection with its employment security operations, the capital costs involved in acquiring employment security office space, and to assure the required payments to the state for office space used for employment security purposes in a state building.

The purposes under 108.20(2m) itself are UI related. Those in 108.20(5)-(9) are not. Therefore, the Council proposes to repeal them.

This requires amending DWD appropriations subsection 20.445(1)(gf) to eliminate authorization to appropriate of I&P for the administration of employment service programs.

5. **Effects of the Proposed Change:**

- a) **Policy:** No effect on UI division.
- b) **Administrative Impact:** No effect.
- c) **Equitable:** No effect.
- d) **Fiscal:** [Dick Tillema]

6. **State and Federal Issues.**

- a. **Chapter 108.** There are no other provisions of Chapter 108 affected by this proposed law change.
- b. **Administrative Rules.** No rule needs to be changed or created to accommodate this proposed law change.

7. **Proposed Effective Date.**

This proposal will take effect the day following publication of the act.

## **APPENDIX 1**

### **Section 108.20(1)-(9), Stats.**

#### **108.20 Administrative account.**

(1) To finance the administration of this chapter and to carry out its provisions and purposes there is established the "administrative account". This account shall consist of all contributions and moneys not otherwise appropriated paid to or transferred by the department for the account under s. 108.19, and of all moneys received for the account by the state or by the department from any source, including all federal moneys allotted or apportioned to the state or the department for the employment service or for administration of this chapter, or for services, facilities or records supplied to any federal agency from the appropriation under s. 20.445 (1) (n). The department shall make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the department for the administrative account shall be paid over to the state treasurer and credited to that account for the administration of this chapter and the employment service, for the payment of benefits chargeable to the account under s. 108.07 (5) and for the purposes specified in sub. (2m).

(2m) From the moneys not appropriated under s. 20.445 (1) (ge), (gf) and (gg) which are received by the administrative account as interest and penalties under this chapter, the department shall pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m) and may pay interest due on advances to the unemployment reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, may make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment insurance program, may make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act or may provide career counseling center grants under s. 106.14, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund. Any moneys reverting to the administrative account from the appropriations under s. 20.445 (1) (ge) and (gf) shall be utilized as provided in this subsection.

**NOTE: Sub. (2m) is repealed and recreated eff. 7-1-99 by 1997 Wis. Act 27 and amended by 1997 Wis. Act 39 to read:**

(2m) From the moneys not appropriated under s. 20.445 (1) (ge), (gf) and (gg) which are received by the administrative account as interest and penalties under this chapter, the department shall pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m) and may pay interest due on advances to the unemployment

reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, may make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment insurance program, or may make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund. Any moneys reverting to the administrative account from the appropriations under s. 20.445 (1) (ge) and (gf) shall be utilized as provided in this subsection.

(3) There shall be included in the moneys governed by sub. (2m) any amounts collected by the department under ss. 108.04 (11) (c) and 108.22 (1) (a) as tardy filing fees, forfeitures or interest on delinquent payments and any excess moneys collected under s. 108.19 (1m).

(4) Any moneys transferred to the administrative account from the federal administrative financing account pursuant to s. 108.161 shall be expended or restored to that account in accordance with s. 108.161.

(5) If and to the extent that moneys transferred under sub. (4) are unavailable to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the department in connection with its employment security operations, the moneys available sub. (2m) may be used for such financing.

(6) To the extent that moneys available under sub. (2m) are used to finance some or all of the capital costs involved in acquiring employment security office space, there shall be applied to the moneys thus used (the same as if they were moneys credited under s. 108.161) the provisions of s. 108.161 (7), (8), (8m) and (9), except that any resulting credits attributable to the moneys thus used shall be credited under this section.

(7) To the extent that federal grants hereunder, or moneys available under sub. (2m), or both, are used to amortize the capital costs of employment security office quarters in a state office building, s. 108.161 (9) shall apply to the costs and quarters thus amortized, except that any resulting credits shall be allocated according to the funds thus used. When such grants or moneys or both have fully amortized such costs, s. 108.161 (8m) shall apply to such quarters.

(8) As to office space used for employment security purposes in a state building, if and while federal grants for employment security administration do not fully cover the current costs (either gross rent, or operating costs) properly payable by the department to the state with respect to such space, the department may reserve and use the moneys available under sub. (2m) to assure the required payments to the state.



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**(9)** There shall be charged to any moneys available under s. 108.161, until the moneys currently available are fully obligated, any amounts obligated for employment security local office building projects, with any remaining costs of such projects charged to the employment security moneys available under sub. (2m), pursuant to sub. (5).

**History:** 1973 c. 90 s. 559; 1981 c. 36 ss. 38, 39, 45; 1983 a. 8, 388; 1985 a. 17, 29, 40; 1987 a. 27, 38, 403; 1989 a. 77; 1991 a. 89; 1997 a. 27, 39, 252.

## APPENDIX 2

### Section 20.445(1)(gd)-(gh), Stats.

**20.445 (intro.) Workforce development, department of.** There is appropriated to the department of workforce development for the following programs:

\* \* \* \*

#### **(1) Workforce development.**

\* \* \* \*

(gd) *Unemployment interest and penalty payments.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and 108.22, assessments under s. 108.19 (1m) and forfeitures under s. 103.05 (5), all moneys not appropriated under pars. (ge), (gf) and (gg) and all moneys transferred to this appropriation account from the appropriation account under par. (gh) for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under s. 108.17 (3m), for the payment of interest due on advances from the federal unemployment account under title XII of the social security act to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances, except as otherwise provided in s. 108.20, and for the payment of career counseling center grants under s. 106.14.

**NOTE: Par. (gd) is affected eff. 7-1-99 by 1997 Wis. Act 27, s. 613, 1997 Wis. Act 39, s. 10, and 1997 Wis. Act 252, s. 23, to read:**

(gd) **Unemployment interest and penalty payments.** From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and 108.22, assessments under s. 108.19 (1m) and forfeitures under s. 103.05 (5), all moneys not appropriated under pars. (ge), (gf) and (gg) and all moneys transferred to this appropriation account from the appropriation account under par. (gh) for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under s. 108.17 (3m), for the payment of interest due on advances from the federal unemployment account under title XII of the social security act to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances, except as otherwise provided in s. 108.20.

(ge) *Unemployment reserve fund research.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and 108.22, the amounts in the schedule for research relating to the current and anticipated condition of the unemployment reserve fund under s. 108.14 (6).

(gf) *Employment security administration.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (13) (c) and 108.22, the amounts in the schedule for the administration of employment service programs and unemployment insurance programs under ch. 108 and s. 106.09 and federal or state unemployment insurance programs authorized by the governor under s. 16.54; and for payments to satisfy any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance involving the unemployment insurance program.

(gg) *Unemployment information technology systems; interest and penalties.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (13) (c) and 108.22, as a continuing appropriation, the amounts in the schedule for the purpose specified in s. 108.19 (1e).

(gh) *Unemployment information technology systems; assessments.* All moneys received from assessments levied under s. 108.19 (1e) and 1997 Wisconsin Act 39, section 164 (2), for the purpose specified in s. 108.19 (1e). The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (gd).